



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201012051**
Release Date: 3/26/2010

Date: December 31, 2009

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-05; 501.06-01

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(6). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040(CG) (11-2005)
Catalog Number 476352

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

Letter 4040 (CG) (11-2005)
Catalog Number 476352



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: October 22, 2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = Date
C = State
D = Name of Entity
E = Name of University
F = Name of Company
G = Name of Company
H = Name of Company

UIL Nos:

501.03-05
501.06-01

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(6). The basis for our conclusion is set forth below.

ISSUE:

Do you qualify for tax exemption under section 501(c)(6) of the Internal Revenue Code?

FACTS:

You were incorporated on B as a Nonprofit Cooperative Corporation in C. Your Articles of Incorporation state you were created for the following purpose:

Community, social and economic development through public-private partnerships and collaborations on a cooperative basis.

Article II, Section 2.01 Purposes, of your Bylaws states: This corporation is organized, and at all times shall be operated to pursue a broad range of programs that improve business conditions for one or more Members within the state for the interest of the community to be advanced. The corporation will accomplish its mission through the development of public private partnerships

for the development of critical infrastructures that will promote community revitalization, economic development and quality healthcare, advancing education, meet the special needs of the elderly, provide safe, decent and affordable housing to low-income families, and related projects that lessen the burdens of government, and protect the environment, all within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, or any successor provision of any subsequent federal tax law (the "Code").

Article III of your Bylaws state there shall be four classes of members: Founding, Community Enterprises, Private Partner and Charter. Founding Members are organizations which have provided various levels of support to create the corporation. The initial Founding Members shall be [F], [G] and [H]. Additional Founding Members may be admitted, upon such terms and conditions as may be determined, from time to time by the Founding Members Board Members, as defined and provided in Section 4.02A, with the written consent of all of the then existing Founding Members. Founding Member may remain Founding Members as long as they continue to fulfill their obligations under these Bylaws and additional requirement set forth by the Founding Members Board Members.

Community Enterprise Members are non-profit corporations or governmental entities engaged in community, social and/or economic development through public-private partnerships and collaborations with this corporation. Only non-profit corporations and governmental entities may be Community Enterprise Members. Community Enterprise Members may be admitted to membership upon a majority vote of the Board for a term determined in accordance with the policies and procedures adopted by the Board.

Private Partner Members shall be persons other than non-profit corporations or governmental entities engaged in community, social and/or economic development through public-private partnerships and collaborations with other Members and/or this corporation. Private Partnership Members may be admitted upon majority vote of the Board for a term determined in accordance with the policies and procedures adopted by the Board.

Charter Members are governmental entities and/or non-profit corporations interested in or who support community, social and economic development through public-private partnerships collaborations. Only governmental entities and non-profit corporations may become Charter Members. Charter Members need not be engaged in any collaboration, program or project with any other Member or with this corporation, but must be supportive of one or more such programs or projects. Charter Members may be admitted upon majority vote of the Board for a term determined in accordance with the policies and procedures adopted by the Board,

Membership into your organization will be denied if a community does not have a critical infrastructure project to develop through a public private partnership or if an organization would not agree to follow the bylaws.

Article IV, Section 4.01 of your Bylaws states that the Board shall have full power to conduct, manage, and direct the business and affairs of the Corporation; and all powers of the corporation are hereby granted to and vested in the Board.

Article IV, Section 4.02 states that the Board is composed of the following persons, all of whom shall be natural persons of full age.

- A. **Founding Members Board Members** – Each of the founding members shall be entitled to appoint one member to the Board to serve terms as provided in section 4.03. The Members so appointed are herein sometimes call the Founding Members Board Members. The Founding Members Board Members shall be appointed for such term as may be determined from time to time by the Founding Member appointing that Founding Members Board Member.
- B. **Elected Directors** – No less than one and no more than nine additional members as may be determined from time to time by the Board. The Directors provided for in this Section 4.02 shall be elected by majority vote of the Members and shall serve for four years.
- C. **Alternatives** – A person or group of persons or other entity entitled to appoint, designate or otherwise select one or more directors may select one or more alternates for each such director.

Page 2 of your application states you were organized "to facilitate projects, serve and support its members in territorial regions, to oversee project deliveries and effectively access state and federal funding. We have structured the Alliance to serve specific regions of [C] that are organized in the same fashion of as the [D]. This structure enables the Alliance to configure and manage projects from region to region, into specific clusters." You state on page 9 of your application that "[T]he purpose of this Coop is to facilitate economic development by creating a public /private partnership to accelerate development."

In your attachment to Schedule C of your application, you state you provide the following services to members: Facilitation Services, Community Development Services, Economic Development Services and Project Planning Services. In your response to our request for additional information, you state that you were "created to create a collaboration effort by bringing together public, non-profit, and private sector entities, developing a critical infrastructure project through a public private partnership, that will be owned and operated by the public private partnership, and accomplish the local planning goals and objectives." You provide a service to achieve a result and that result will provide you with a membership fee and development fee but not for profits from the resulting newly created for-profit partnership.

The collaboration would consist of a Charter Member and a Private Partner Member. The Charter Member represents the public sector (governmental and non-profit); it is the primary membership group the private public partnership seeks to serve through the provision of goods and services. The for-profit Private Partner Member would deliver the needed goods and/or services to the Charter Member; it is the general partner. You will serve as a special limited partner to collect membership fees. Your focus is to serve your members by providing development services to two or more members, who pay membership fees and development fees to achieve a critical infrastructure implementation. You further state your services will be provided at cost.

You state that most communities have needs for critical infrastructure improvements that must be completed in order for the communities to maintain their economic viability. Infrastructure needs include energy acquisition, energy efficiency, waste product management, essential

communications systems, adequate buildings and other facilities to house businesses. Local units of government lack the capacity to develop and operate such projects due to their lack of debt repayment capacity or their limited manpower to manage such projects. A new model is needed to assist local governments develop critical infrastructure projects.

You define critical infrastructure as a government term used to describe assets that are essential for the functioning of a society and economy. Most commonly associated with the term are, but not limited to facilities for:

- electricity generation, transmission and distribution;
- gas production, transport and distribution;
- oil and oil products production, transportation and distribution;
- telecommunication;
- water supply;
- agriculture, food production and distribution;
- heating;
- public health;
- transportation systems;
- financial services
- security services.

You have a contract with E cooperative extension service to identify community needs and stakeholders. E will identify critical infrastructure needs and participants who are willing to participate in developing a solution to the problem identified. You will then prepare a letter of intent to lay out the three step process to develop a sound business plan to achieve the desired objectives. If the participants accept the plan, a public/private partnership is developed and the stakeholders become members within of the appropriate membership classes. The risks and rewards of project ownership would be assigned to the public, non-profit and private entities that would make up the ownership of the project. Your goal is to create a situation where the existing public/non-profit and private sectors can become the owner operator of the new entity created to implement the critical infrastructure project. You collect the membership fee from the new member and the development fee at the end of the construction. The development fee for services provided range from 6% to 10% of the development costs.

You state that E, a Founding Member, is a corporation that would be a General Partner in a district open loop geothermal heating and cooling system that could substantially lower the heating and cooling costs of residential and commercial users in a community.

You state that G, a Founding Member, is a real estate development company that you will consider being a General Partner in a public private partnership if the project fits into the type of development that they normally own and operate.

You provided a newspaper article with your application that describes a partnership you established with a city in C, along with E and G. The article states your project broke ground with an eco-friendly parking garage, followed by the construction of high-end waterfront condominiums, a new Bus station and two mixed-use buildings with commercial space and low-income or elderly apartments, all equipped with geothermal.

In your response to our request for additional information, you state that you will provide public services for your members. Examples of the public services you provide include mediation of disputes, acquisition of subject matter experts, environmental information collections, etc. You will collect membership fees from each member and a project development fees for the facilitation process, business planning process, and financing plan process you provide for your members.

You are supported by Membership Dues, Other Donations and Other Assessments. The Other Assessments, as determined by the Board from time to time, are assessed to fund the activities and programs of the corporation. In addition, development fees are charged to members once a private public partnership is created.

LAW:

Section 501(c)(6) of the Internal Revenue Code provides exemption from Federal income tax for "Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Section 1.501(c)(6)-1 of the Income Tax Regulations states, "A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of the kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization, whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league."

Revenue Ruling 59-391, 1959-2 C.B. 151 describes an organization made up of individuals, firms, associations, and corporations engaged in different lines of business and seeking to exchange information on business prospects. It was determined that it had no common business interest other than to increase individual sales and therefore did not qualify for exemption under section 501(c)(6) of the Code.

Revenue Ruling 61-170, 1961-2 C.B. 112 describes an association of professional private duty nurses and practical nurses which operated a nurses' registry to provide its members employment opportunities. It did not qualify for exemption under section 501(c)(6) of the Code because its primary purpose was the operation of a regular business of a kind ordinarily carried on for profit and it was engaged in rendering particular services for individual persons rather than promoting the general business conditions of the nursing profession.

Revenue Ruling 66-338, 1966-2 C.B.226 describes an organization formed to promote the interests of a particular trade. Field representatives of the organization visited members to consult with them and advise them on their planning, modernization and layouts of the members' stores. They sold supplies and equipment to the members. The organization did not qualify for exemption

under section 501(c)(6) of the Code. The organization's activities were determined to constitute the performance of particular services for members as distinguished from activities aimed at the improvement of business conditions in their trade as a whole.

In Revenue Ruling 67-182, 1967-1 C.B. 141, exemption under 501(c)(6) was denied to an organization whose only activity was providing a reference library of electric logs and maps to its members. The revenue ruling stated that the organization was making specialized information available to its members. That served as a convenience and economy in the conduct of their businesses. Operation of the library was found to be an activity that constituted the performance of particular services for members.

In Apartment Operations Association v. Commissioner of Internal Revenue, 136 F.2d 435 (1943), the Court denied a claim of exemption as a business league. The organization claiming exemption in the case was an association of apartment owners. The organization acted as a clearinghouse for information about tenants, operation of apartment houses, legislation affecting the business, and gave counsel and advice to members to promote their welfare. The organization also provided printed forms at cost to members, purchased goods and equipment for re-sale to members at prices lower than they could obtain for themselves, and published a journal containing advertisements. The organization also represented its members in labor disputes and negotiations. The organization did not earn a profit. The Court found that the organization did not meet the description of a business league because it regularly carried on a business of the kind ordinarily conducted for profit. The court also found there was no evidence showing that the business and services provided to members were merely incidental to the organization's total activities.

In Credit Managers Association of Northern and Central California v. Commissioner, 3 T.C.M. 385 (1944), the applicant corporation was denied exemption as a business league. The organization operated a credit bureau that compiled and provided credit information about customers to members on a fee basis. The Court held that the services supplied were of a sort vital to the members in the operation of their business, which they would have been compelled to purchase elsewhere or supply themselves at a greater cost, but for the existence of the organization. The Court stated, "We do not conceive the statute to extend exemption to an organization existing primarily for the convenience or economy of its members, but only to such organizations as are dedicated principally to a public or quasi-public purpose."

In MIB, Inc. v. Commissioner of Internal Revenue, 734 F.2d 71 (1986), an organization whose membership consisted of insurance companies was denied exemption as a business league under section 501(c)(6) of Code. The principal activity carried on by MIB was the maintenance and operation of a computerized system for compiling, storing and distributing information about applicants for life insurance. MIB argued that its activities created a deterrent to fraud which created benefits to the industry through reduced investigation expenses and reduced losses due to misclassification of applicants. The Court held MIB's activities by their nature consisted of rendering particular services for individual member companies and served to benefit the individual members' businesses. The Court also stated that even though the services produced various indirect and intangible benefits for the industry as a whole, the fact remained that the rendered services were in form and substance particular services for individual member companies.

APPLICATION OF LAW:

Section 1.501(c)(6)-1 of the Regulations provides that an organization having some common business interest, the purpose of which is to promote such common business interest and not engage in a regular business ordinarily carried on for profit will qualify for exemption under section 501(c)(6) of the Code. You are not operated as a business league. You engage in a regular business of the kind ordinarily carried on for profit. Your Bylaws state you were formed to improve the business conditions of your members. You have also stated that you serve and support your members. Your activities constitute the performance of particular services for your members.

You are similar to the organization described in Revenue Ruling 59-391. Your membership is made up of various non-profit, municipalities and for-profit entities. Your purpose is to match the needs of non-profit and governmental entities with services provided by your initial Founding Members and Private Partner Members. This is the provision of particular services for your members.

You are similar to the organization described in Revenue Ruling 61-170. That organization assigned nurses jobs to its members. Likewise, you coordinate the assignment of critical infrastructure projects to your initial Founding Members and Private Partner Members.

You are similar to the organization described in Revenue Ruling 66-338. Like that organization, you were formed to promote the interest of your members through provision of support and services to them and to oversee projects. Your activities result in the provision of particular services for your members. Furthermore, your activities do not advance a particular line of business but rather the business interests of your members.

You are similar to the organization described in Revenue Ruling 67-182. That organization was denied exemption because it served the convenience and economy of its members' businesses. Likewise you provide management services for the convenience and economy of your members and therefore you are providing particular services to your members.

You are similar to the organization described in Apartment Operations Association v. Commissioner of Internal Revenue. You also provide services to your members such as development services, facilitation services, community development services, economic development services and project planning services, mediation of disputes, acquisition of subject matter experts, environmental information collections, and etc. to your members. These services constitute the particular services for your members and these activities are the primary function of your organization.

You are similar to the organization described in Credit Managers Association of Northern and Central California v. Commissioner. Likewise, you provide services to your members for fees. This results in the convenience and economy of your members. In essence you exist for the convenience or economy of your members.

You are similar to the organization described in MIB, Inc. In that case, the organization's principal activity was the provision of testing and analyzing services for a fee to its members.

You likewise provide particular services to your members. In return, you receive membership fees and development fees.

CONCLUSION:

Based on the facts and information submitted, you are not operated exclusively for exempt purposes under section 501(c)(6) of the Code. You are operated in the manner of a for-profit entity. Your activities are the provision of particular services to your members. Your activities further the business interests of your Private Partner Members and initial Founding Members since they contract with governmental entities and non-profit entities to provide services to improve their infrastructure. This constitutes the performance of particular services for members and inurement, which is impermissible under section 501(c)(6) of the Code.

Accordingly, you do not qualify for exemption under section 501(c)(6) of the Code. You must file Federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and

accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure: Publication 892